

STEPHANIE FORMAN, ESQ.; STATE BAR NO.: 195757  
DIANA M. RIVERA, ESQ.; STATE BAR NO.: 222025

**THARPE & HOWELL, LLP**  
**15250 Ventura Blvd., Ninth Floor**  
**Sherman Oaks, California 91403**  
**(818) 205-9955; (818) 205-9944 fax**  
E-Mail: [sforman@tharpe-howell.com](mailto:sforman@tharpe-howell.com)  
E-Mail: [drivera@tharpe-howell.com](mailto:drivera@tharpe-howell.com)

Attorneys for Defendant,  
LOWE'S HOME CENTERS, LLC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

ANDRES AGAPITO, an individual  
Plaintiff,

v.

LOWE'S HOME CENTERS, LLC., a  
North Carolina Limited Liability  
Company, and DOES 1 through 20,  
inclusive,

Defendants.

Case No.: 5:23-cv-00035 SSS (KKx)  
[*San Bernardino Superior Court Case*  
No.: CIVSB2216757]

[Assigned to Hon. Sunshine Suzanne  
Sykes, District Judge; Hon. Kenly Kiya  
Kato, Magistrate Judge]

**STIPULATED PROTECTIVE ORDER**

Complaint Filed: August 4, 2022

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below,

1 that this Stipulated Protective Order does not entitle them to file confidential  
2 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be  
3 followed and the standards that will be applied when a party seeks permission from  
4 the court to file material under seal.

5 **B. GOOD CAUSE STATEMENT**

6 Federal Rules of Civil Procedure, Rule 26(c)(1) states in pertinent part, that the  
7 Court, upon a showing of good cause may “issue an order to protect a party from  
8 annoyance, embarrassment, oppression, or undue burden or expense.” Fed.R.Civ.P.  
9 26(c)(1). In the instant matter, Defendant Lowe’s Home Centers, LLC’s Confidential  
10 Documents contain proprietary and confidential trade secret information relating to  
11 Defendant Lowe’s Home Centers, LLC’s business practices, its safety protocol, and  
12 surveillance videos. Defendant Lowe’s Home Centers, LLC. (“Defendant” or  
13 “Lowe’s”) derives independent economic value from maintaining the confidentiality  
14 of the policies and procedures set forth in these Confidential Documents.

15 Defendant is a retailer in the home improvement industry and has conducted  
16 business in California since 1998. The home improvement retail industry is very  
17 competitive. As a result of years of investing time and money in research and  
18 investigation, Defendant developed the policies contained in the Confidential  
19 Documents for the purposes of maintaining the security of its facilities, providing  
20 quality customer service, and ensuring the safety of its employees, customers, and  
21 other invitees. These policies and procedures, as memorialized in the Confidential  
22 Documents, were created and generated by Lowe’s for Lowe’s, and are used for the  
23 purposes of maintaining safety at its stores and creating efficient and organized work  
24 environments for its employees. As a result, Defendant is able to minimize the waste  
25 of any resources, which is a key factor in generating profitability for its business.

26 Defendant derives economic value from maintaining the secrecy of its Confidential  
27 Documents. If disclosed to the public, the trade secret information contained in  
28 Defendant’s Confidential Documents would reveal Defendant’s internal operations

1 and could potentially be used by competitors as a means to compete for its customers,  
2 interfere with its business plans and thereby gain unfair business advantages. If  
3 Defendant's safety protocol were revealed to the general public, it would hinder  
4 Defendant's ability to effectively resolve and minimize liability claims, and its goal of  
5 protecting its customers and employees from theft and other crimes. Unrestricted or  
6 unprotected disclosure of such information would result in prejudice or harm to  
7 Defendant by revealing Lowe's competitive confidential information, which has been  
8 developed at the expense of Lowe's and which represents valuable tangible and  
9 intangible assets. Accordingly, the parties respectfully submit that there is good cause  
10 for the entry of this Protective Order.

11 2. DEFINITIONS

12 2.1 Action: of Andres Agapito v Lowe's Home Centers, LLC., Case No.:  
13 5:23-cv-00035 SSS (KKx).

14 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
15 of information or items under this Order.

16 2.3 "CONFIDENTIAL" Information or Items: information (regardless of  
17 how it is generated, stored or maintained) or tangible things that qualify for protection  
18 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
19 Statement.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
21 support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information or  
23 items that it produces in disclosures or in responses to discovery as  
24 "CONFIDENTIAL."

25 2.6 Disclosure or Discovery Material: all items or information, regardless of  
26 the medium or manner in which it is generated, stored, or maintained (including,  
27 among other things, testimony, transcripts, and tangible things), that are produced or  
28 generated in disclosures or responses to discovery in this matter.

1           2.7 Expert: a person with specialized knowledge or experience in a matter  
 2 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
 3 an expert witness or as a consultant in this Action.

4           2.8 House Counsel: attorneys who are employees of a party to this Action.  
 5 House Counsel does not include Outside Counsel of Record or any other outside  
 6 counsel.

7           2.9 Non-Party: any natural person, partnership, corporation, association, or  
 8 other legal entity not named as a Party to this action.

9           2.10 Outside Counsel of Record: attorneys who are not employees of a  
 10 party to this Action but are retained to represent or advise a party to this Action and  
 11 have appeared in this Action on behalf of that party or are affiliated with a law firm  
 12 which has appeared on behalf of that party, and includes support staff.

13           2.11 Party: any party to this Action, including all of its officers, directors,  
 14 employees, consultants, retained experts, and Outside Counsel of Record (and their  
 15 support staffs).

16           2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
 17 Discovery Material in this Action.

18           2.13 Professional Vendors: persons or entities that provide litigation support  
 19 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
 20 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
 21 their employees and subcontractors.

22           2.14 Protected Material: any Disclosure or Discovery Material that is  
 23 designated as "CONFIDENTIAL."

24           2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
 25 from a Producing Party.

### 26           3. SCOPE

27           The protections conferred by this Stipulation and Order cover not only Protected  
 28 Material (as defined above), but also (1) any information copied or extracted from

1 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
 2 Material; and (3) any testimony, conversations, or presentations by Parties or their  
 3 Counsel that might reveal Protected Material.

4 Any use of Protected Material at trial shall be governed by the orders of the trial  
 5 judge. This Order does not govern the use of Protected Material at trial.

#### 6 4. DURATION

7 Once a case proceeds to trial, all of the information that was designated as  
 8 confidential or maintained pursuant to this protective order becomes public and will  
 9 be presumptively available to all members of the public, including the press, unless  
 10 compelling reasons supported by specific factual findings to proceed otherwise are  
 11 made to the trial judge in advance of the trial. See Kamakana v. City and County of  
 12 Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”  
 13 showing for sealing documents produced in discovery from “compelling reasons”  
 14 standard when merits-related documents are part of court record). Accordingly, the  
 15 terms of this protective order do not extend beyond the commencement of the trial.

#### 16 5. DESIGNATING PROTECTED MATERIAL

##### 17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each Party or Non-Party that designates information or items for protection under  
 19 this Order must take care to limit any such designation to specific material that  
 20 qualifies under the appropriate standards. The Designating Party must designate for  
 21 protection only those parts of material, documents, items, or oral or written  
 22 communications that qualify so that other portions of the material, documents, items,  
 23 or communications for which protection is not warranted are not swept unjustifiably  
 24 within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations  
 26 that are shown to be clearly unjustified or that have been made for an improper purpose  
 27 (e.g., to unnecessarily encumber the case development process or to impose  
 28 unnecessary expenses and burdens on other parties) may expose the Designating Party

1 to sanctions.

2 If it comes to a Designating Party's attention that information or items that it  
3 designated for protection do not qualify for protection, that Designating Party must  
4 promptly notify all other Parties that it is withdrawing the inapplicable designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in  
6 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
7 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
8 under this Order must be clearly so designated before the material is disclosed or  
9 produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic  
12 documents, but excluding transcripts of depositions or other pretrial or trial  
13 proceedings), that the Producing Party affix at a minimum, the legend  
14 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
15 contains protected material. If only a portion or portions of the material on a page  
16 qualifies for protection, the Producing Party also must clearly identify the protected  
17 portion(s) (e.g., by making appropriate markings in the margins).

18 A Party or Non-Party that makes original documents available for inspection  
19 need not designate them for protection until after the inspecting Party has indicated  
20 which documents it would like copied and produced. During the inspection and before  
21 the designation, all of the material made available for inspection shall be deemed  
22 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants  
23 copied and produced, the Producing Party must determine which documents, or  
24 portions thereof, qualify for protection under this Order. Then, before producing the  
25 specified documents, the Producing Party must affix the "CONFIDENTIAL legend"  
26 to each page that contains Protected Material. If only a portion or portions of the  
27 material on a page qualifies for protection, the Producing Party also must clearly  
28 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party’s designation until the Court rules on the challenge.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL



1           7.1 Basic Principles. A Receiving Party may use Protected Material that is  
 2 disclosed or produced by another Party or by a Non-Party in connection with this  
 3 Action only for prosecuting, defending, or attempting to settle this Action. Such  
 4 Protected Material may be disclosed only to the categories of persons and under the  
 5 conditions described in this Order. When the Action has been terminated, a Receiving  
 6 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

7           Protected Material must be stored and maintained by a Receiving Party at a  
 8 location and in a secure manner that ensures that access is limited to the persons  
 9 authorized under this Order.

10           7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
 11 otherwise ordered by the court or permitted in writing by the Designating Party, a  
 12 Receiving Party may disclose any information or item designated “CONFIDENTIAL”  
 13 only to:

14           (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
 15 well as employees of said Outside Counsel of Record to whom it is reasonably  
 16 necessary to disclose the information for this Action;

17           (b) the officers, directors, and employees (including House Counsel) of  
 18 the Receiving Party to whom disclosure is reasonably necessary for this Action;

19           (c) Experts (as defined in this Order) of the Receiving Party to whom  
 20 disclosure is reasonably necessary for this Action and who have signed the  
 21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22           (d) the court and its personnel;

23           (e) court reporters and their staff;

24           (f) professional jury or trial consultants, mock jurors, and Professional  
 25 Vendors to whom disclosure is reasonably necessary for this Action and who have  
 26 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27           (g) the author or recipient of a document containing the information or a  
 28 custodian or other person who otherwise possessed or knew the information;



(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

#### 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The

1 Designating Party shall bear the burden and expense of seeking protection in that court  
2 of its confidential material and nothing in these provisions should be construed as  
3 authorizing or encouraging a Receiving Party in this Action to disobey a lawful  
4 directive from another court.

5 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
6 PRODUCED IN THIS LITIGATION

7 (a) The terms of this Order are applicable to information produced by a Non-  
8 Party in this Action and designated as "CONFIDENTIAL." Such information  
9 produced by Non-Parties in connection with this litigation is protected by the remedies  
10 and relief provided by this Order. Nothing in these provisions should be construed as  
11 prohibiting a Non-Party from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request, to produce  
13 a Non-Party's confidential information in its possession, and the Party is subject to an  
14 agreement with the Non-Party not to produce the Non-Party's confidential  
15 information, then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the Non-Party  
17 that some or all of the information requested is subject to a confidentiality agreement  
18 with a Non-Party;

19 (2) promptly provide the Non-Party with a copy of the Stipulated  
20 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
21 specific description of the information requested; and

22 (3) make the information requested available for inspection by the  
23 Non-Party, if requested.

24 (c) If the Non-Party fails to seek a protective order from this court within 14  
25 days of receiving the notice and accompanying information, the Receiving Party may  
26 produce the Non-Party's confidential information responsive to the discovery request.  
27 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce  
28 any information in its possession or control that is subject to the confidentiality

1 agreement with the Non-Party before a determination by the court. Absent a court  
2 order to the contrary, the Non-Party shall bear the burden and expense of seeking  
3 protection in this court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
6 Protected Material to any person or in any circumstance not authorized under this  
7 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
8 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
9 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
10 persons to whom unauthorized disclosures were made of all the terms of this Order,  
11 and (d) request such person or persons to execute the “Acknowledgment and  
12 Agreement to Be Bound” that is attached hereto as Exhibit A.

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
14 PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain  
16 inadvertently produced material is subject to a claim of privilege or other protection,  
17 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
18 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
19 may be established in an e-discovery order that provides for production without prior  
20 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
21 parties reach an agreement on the effect of disclosure of a communication or  
22 information covered by the attorney-client privilege or work product protection, the  
23 parties may incorporate their agreement in the stipulated protective order submitted to  
24 the court.

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
27 person to seek its modification by the Court in the future.

28 12.2 Right to Assert Other Objections. By stipulating to the entry of this

1 Protective Order no Party waives any right it otherwise would have to object to  
2 disclosing or producing any information or item on any ground not addressed in this  
3 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
4 ground to use in evidence of any of the material covered by this Protective Order.

5 12.3 Filing Protected Material. A Party that seeks to file under seal any  
6 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
7 only be filed under seal pursuant to a court order authorizing the sealing of the specific  
8 Protected Material at issue. If a Party's request to file Protected Material under seal is  
9 denied by the court, then the Receiving Party may file the information in the public  
10 record unless otherwise instructed by the court.

11 13. FINAL DISPOSITION

12 After the final disposition of this Action, as defined in paragraph 4, within 60  
13 days of a written request by the Designating Party, each Receiving Party must return  
14 all Protected Material to the Producing Party or destroy such material. As used in this  
15 subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
16 summaries, and any other format reproducing or capturing any of the Protected  
17 Material. Whether the Protected Material is returned or destroyed, the Receiving Party  
18 must submit a written certification to the Producing Party (and, if not the same person  
19 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
20 category, where appropriate) all the Protected Material that was returned or destroyed  
21 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
22 compilations, summaries or any other format reproducing or capturing any of the  
23 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
24 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
25 legal memoranda, correspondence, deposition and trial exhibits, expert reports,  
26 attorney work product, and consultant and expert work product, even if such materials  
27 contain Protected Material. Any such archival copies that contain or constitute  
28 Protected Material remain subject to this Protective Order as set forth in Section 4

(DURATION).

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

BLANCO & ARIAS, APC

/s/Angela Leong

Dated: 2/24/2023

By: \_\_\_\_\_

JANETH ARIAS  
ANGELA LEONG  
Attorneys for Plaintiff,  
ANDRES AGAPITO

THARPE & HOWELL, LLP

Dated: 2/24/2023

By: \_\_\_\_\_ /s/Diana M. Rivera

STEPHANIE FORMAN  
DIANA M. RIVERA  
Attorneys for Defendant,  
LOWE'S HOME CENTERS, LLC

*Diana M. Rivera, the filer of this document, attests that all other signatories listed above, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing, pursuant to L.R. 5-4.3.4(a)(2)(i).*

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: February 24, 2023



HON. KENEY KIYA KATO

United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_, [print or type full name] of  
\_\_\_\_\_, [print or type full address]

declare under penalty of perjury that I have read in its entirety and understand the  
Stipulated Protective Order that was issued by the United States District Court for  
the Central District of California on \_\_\_\_\_ [date] in the case of  
Andres Agapito v Lowe's Home Centers, LLC., Case No.: 5:23-cv-00035 SSS  
(KKx), I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order and I understand and acknowledge that failure to so comply could  
expose me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is subject  
to this Stipulated Protective Order to any person or entity except in strict compliance  
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Central District of California for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of  
this action. I hereby appoint \_\_\_\_\_ [print or type full  
name] of \_\_\_\_\_ [print  
or type full address and telephone number] as my California agent for service of  
process in connection with this action or any proceedings related to enforcement of  
this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_